

**COMMISSION MEETING
THURSDAY, AUGUST 10, 2006
DRAFT MINUTES**

Chair Ellis called the meeting to order at the Red Lion Hotel located in Wenatchee. He introduced the following:

MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilcene
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR MARGARITA PRENTICE, Renton
 SENATOR JEROME DELVIN, Richland

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 JEANETTE SUGAI, Acting Assistant Director–Field Operations
 DAVE TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

Chair Ellis introduced and extended a warm welcome to Keven Rojecki, recently appointed to the Commission. Chair Ellis announced that Commissioner Rojecki is a Firefighter for the SeaTac Fire Department and he has also participated in union activities for the Firefighters Union at SeaTac as President and as Secretary/Treasurer. Commissioner Rojecki has also served as the Legislative Liaison representing the Washington State Council of Firefighters since 2000.

Chair Ellis also introduced and welcomed newly appointed Deputy Director Sharon Reese. He noted that Ms. Reese also has a lengthy history in various parts of state government including a previous employment period with the Gambling Commission as a Special Assistant to the Director where she specialized in Tribal negotiations. Ms. Reese also served as the Assistant Director of Special Operations for a period of time. She left the Gambling Commission in 1997, and she has served as the Deputy Director for the Washington State Criminal Justice Training Commission. Prior to her July 2006 appointment to the Gambling Commission, Ms. Reese worked with the King County

Sheriff's Office as an educator consultant involved in putting together a number of innovative training programs. Chair Ellis noted the Commissioners were as excited as Director Day and the staff in having Deputy Director Reese aboard, and he noted her excellent credentials would be extremely important to the operation of the Gambling Commission.

Chair Ellis called Director Day forward and advised that he had the honor to present to Director Day a certificate recognizing his five years of service to the State of Washington as the Director for the Gambling Commission. He stated that Director Day has done an excellent job, and he affirmed the Commissioners were all aware of the high esteem that the agency is held in, as well as agency staff's high morale and high regard for the management of the agency. Chair Ellis congratulated Director Day on his five years of service and extended the Commission's hope that it is followed by many more years.

Chair Ellis called Senator Prentice forward, and commented that he took personal pride in presenting a certificate to Senator Margarita Prentice in recognition of her 12 years of service as an Ex officio Member for the Gambling Commission. Chair Ellis noted that when he was appointed as a Commissioner 18 months ago, one of his main sources of information, support, and background was Senator Prentice; who was kind enough to share her deep knowledge of the various issues relating to the Gambling Commission. Chair Ellis emphasized that Senator Prentice has tremendous institutional knowledge and that she works very hard at being a Gambling Commission member. Chair Ellis extended a heartfelt "thank you" to Senator Prentice for her many contributions to the Gambling Commission as well as the people of the State. **Senator Prentice** graciously accepted the certificate and responded that she was not expecting this presentation. She reflected for a moment on the high esteem that this agency is held in and affirmed that is one of the things that has kept her truly interested and involved. Senator Prentice advised that she knows a lot deeper about how the Commission operates, and it is one agency that she was proud to be associated with.

Director Day introduced Special Agent Kelly Main who was attending the Commission meeting as a participant of the agency's Partnership Program—which provides staff an opportunity to participate in each section of the agency's operations to see how they operate and their various duties and responsibilities.

1. Executive Session:

Chair Ellis recessed the meeting at 1:45 p.m. in order to conduct an Executive Session to discuss a matter relating to pending litigation. At 2:00 p.m. Chair reconvened the public meeting.

ZDI Gaming, Inc., Declaratory Order:

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that the Petition of ZDI Gaming for a final declaratory order authorizing the use of its VIP version 3.4 equipment in the State of Washington is hereby denied, and that the cross petitions of the parties are decided in conformance with the foregoing terms of this final declaratory order.

Chair Ellis inquired if there was any further discussion desired concerning the motion; there was none. Vote taken the motion passed with three aye votes, Commissioner Rojecki abstained. (This is his first meeting and he has not been present to hear the arguments in the other matters concerning this matter.)

Chair Ellis explained that the affect of the Declaratory Order just approved will be to affirm all of the findings that were made by the Administrative Law Judge, and to affirm the conclusions of law and order that the Administrative Law Judge entered that the VIP machine violates the two WAC sections that the judge cited. Section 230-12-050 and 230-3-070. The order vacates the conclusions and order that the VIP machine is not a gambling device. He further explained the Commission's feeling that it is unnecessary to address the issue of the VIP machine not being a gambling device in order to properly dispose of the matter. As the motion indicated, the affect of the order is to deny the petition for a declaratory order.

2. Review of Agenda and Director's Report:

Director Day highlighted inserts to the agenda packet and reviewed the agenda for Thursday and Friday. Under the Petitions for Reconsideration, he requested that the petition for Nga Tran be moved to October based on the fact that the trial date isn't going to be set until September. Additionally, he asked that Item 5 (C), the Brian Long Default be held over to make sure proper notice is served with Mr. Long. Director Day addressed Item 10—Rules Simplification rules relating to raffles. He noted the Commission received a letter from an individual who had taken some time to go through the raffle rules and pointed out some concerns. Staff has looked at the input and wants to make sure the concerns have been properly addressed. He asked that final action on this item be held over until September. **Chair Ellis** concurred with the changes as requested. Director Day continued with the Director's Report.

Legislative Hearing – Joint Committee on Gambling:

Director Day reported the Commerce Committees of the Legislature established a Joint Committee on Gambling and conducted their second hearing on July 12. The agenda packet contains a copy of the PowerPoint presentation provided by staff. He drew attention to the information on Slide 8, which was provided in response to a request regarding comparative costs and how the cost of licenses has changed over the last 20 years. The Bingo Class C and Pull-Tab Class C were detailed because they are one of the largest groups of licensees. In 1986, the cost of the license was \$500 for Bingo and \$960 for pull-tabs. Today, the cost of that Bingo license is down and the pull-tab license is roughly \$70 more over the 20 year period. Director Day indicated that fact was an important thing to keep in mind as the Commission talks about licensing fees and the Commission's costs. He emphasized the Commission's approach on setting and increasing the fees over time has been very conservative.

Addressing Slide 9, **Director Day** noted that of the gross gambling receipts achieved from the Class C Pull-Tab licensee class, the license fees amount to 1.5 percent of the gross. Slide 10, addresses the Bingo Class I licensees, which is one of the larger classes, (up to \$4 million) and utilizing the same comparison, he noted the percentage of the Bingo Class I

gross that goes to license fees is two-tenth's of one percent. Director Day noted that house-banked card room license fees are essentially less than one percent of the net gaming revenues. Director Day felt the statistics would be important to keep in mind as budget decisions are considered.

2007-09 Biennium Budget Presentation:

Director Day presented the agency's biennium budget request and noted that once the Commission takes final action, the budget will be submitted to the Office of Financial Management, which must occur by September 1, 2006. While the budget information is usually in the Executive Budget, it does not go to the Legislature as an appropriated item because the agency is non-appropriated. Director Day again introduced the budget support staff: Administrator Terry Westhoff, Cam Dightman, and Judy Pittelkau. He affirmed that as budget and legislative proposals are developed, staff looks at the Commission's mission, vision, and values in order to focus on protecting the public to ensure that gambling is legal and honest. Staff also considers the legislative declaration of policy which includes things like keeping the criminal element out of gambling, regulation, and control.

Director Day reported that the Commission is its own taxing and spending authority at the same time. Therefore, the Commission must make decisions on how to gain revenue as well identify where those revenues are in order to balance the revenue with planned expenses. He reiterated that the law requires the Commission to cover the cost of enforcement and licensing activities. This year, the Commission went an extra step to bring in an outside CPA to look at the agency's cost allocation and to make sure the Commission was moving forward with the correct cost recovery relative to fees and revenues. Director Day advised the proposed budget includes two fee increases; one that would take affect June 30, 2007, and another that would take effect in January of 2008. He noted that if approved, staff will prepare a fee increase rule for Commission consideration at the September meeting. Director Day advised that the Commission also receives a significant amount of revenues from hourly billing charges. Staff is recommending steadily increasing those billing rates over the next three years in order to achieve the appropriate cost recovery on all sides of the house to fund the agency appropriately. Director Day affirmed license fee increases are restricted in percentage by the Initiative 601 limitations. Generally the limitations are between two and three percent. He noted that absent the fee and the hourly charge increases, the Commission's revenues would be very static. Director Day briefly reviewed a pie chart reflecting the actual sources of revenue. House-banked card rooms account for approximately 16 percent of the Commission's revenues and Tribes account for 20 percent. Pull-tabs remain as the number one source of revenue.

Director Day stated that adjustments were made to the 2007 budget as approved by the Commission last month, which restored staff previously cut from the budget, and added some new initiatives relative to Internet Gambling, radio use, and additional pension costs. He touched briefly on the carry-forward level which essentially is the base funding level or the starting point of the budget. It takes out one time costs, and is a negotiated process between the Office of Financial Management and agency budget staff. The Commission starts with the base budget and creates decision packages for each budget increase or

decrease. Director Day highlighted the four primary decision packages recommended this year.

The first decision package biennializes the reductions and costs of the FY 07 adjustments. It adjusts and continues the negative allotment adjustment, and it continues seven positions and projects added in FY 07. Decision Package 2 includes three elements: it covers the 07-09 projected pension cost increases and it provides for the fund increase in leasing costs and fund growth in the Commission's self-insurance premium. Decision Package 3 addresses adding staff in response to growing workloads specifically in the Tribal Gaming Unit in anticipation of new compacts on the verge of coming forward; as well as an increase in the agency's Communications and Legal Department by approving a permanent part-time staff attorney and secretary. Decision Package 4 provides three important additions for the agency—it implements Phase II of the Special Agent Compensation Plan, it provides replacement costs for the agency's Microsoft Office Suite software on all computers, and reinstates the publication of the agency's Rule Manual.

Director Day reported the proposed 2007-09 biennium expenditure plan reflects a yearly budget of just over \$16 million in 2008 and just under \$16 million for the second year in 2009 for an overall biannual budget of \$32,058,900 with 175.3 FTEs. He noted that in 2002, the Commission's authorized FTE level was 197.2. He also emphasized that the proposed budget for the 07-09 biennium is about 2.3 percent higher than the current biennium, which reflects a fairly conservative increase, and amounts to less than one FTE higher than the current biennium.

Addressing the impact of the FY 07, FY 08, and FY 09 revenue and expenditure estimates on the working capital balance, **Director Day** clarified there were risks to the working capital balance and he noted a sufficient positive balance must be maintained in order to cover items like cash flow, statewide salary increases, further pension rate adjustments, and increases in charges from other agencies. Director Day addressed a chart depicting the overall Gambling Revolving Fund (actual and estimated revenues, the expenditures, and the year-end working capital). Ideally, the Commission tries to match revenues and expenses exactly while still maintaining two months operating costs for a working capital balance. He emphasized that revenues are very projection oriented because staff must estimate how many licenses are going to be in place and they must anticipate collections from the tribes—the budget is an estimate based on history.

Director Day commented that Commission imposed license fee increases usually end up netting around \$300,000 to \$400,000. However, salary increases are usually at least that if not more. He indicated that it takes at least a year or a year and a half to react to any salary increase provided by the Legislature. Director Day discussed the net gambling receipts growth in relation to FTE positions, noting the Commission has been very successful in reducing FTEs while keeping up with the work load. This was accomplished through organizational changes, technology advancements, and streamlining agency processes. He expressed his appreciation for the Commission's approval to extend and approve the positions required in 2007 to keep up with the work load demands.

Director Day requested that the Commission approve a biennium budget of \$16,208,300 in 2008 which authorizes 176.2 FTEs, and \$15,850,600 and 174.4 FTEs for 2009 for a total biennium budget request of \$32,058,900 and 175.3 FTEs.

Senator Prentice questioned the impacts and trends as licensees go out of business.

Director Day responded that staff has calculated an anticipated continual decline in the number of pull-tab and Bingo licensees. Staff anticipates a stable environment for card rooms; currently at 95 or 96 total licensees. Tribal activity is increasing and as the workload shifts from non-tribal licensing to tribal licensing, agents will be shifted to respond to the workload as necessary. Director Day explained the tribal billing rates are increasing and will replace some of the declining revenues. He affirmed that if the Commission ended up having less and less licensees, then staff would have to be reduced—in essence, if the workload drops, the agency would need less people to do the work. Director Day affirmed that staff has already started working with the Tribes regarding the billing system. Normally, as the Commission considers an increase in the hourly rate billing, the Commission provides notice and an opportunity to respond. At this point, staff anticipates implementing the first phase of the tribal fee increases in 2007.

In response to a question posed by Senator Delvin regarding how the decreases or increases are calculated, **Cam Dightman** explained that every other year, budget staff looks at the number of licensees by license type and license class to estimate the future figures. In fiscal year 2004, there were 303 charitable nonprofit punch-board/pull-tab licensees. For FY 08, staff is projecting 265 (a drop of 38 over the four years). In FY 04, there were 1,547 commercial stimulant licensees, and in FY 08 staff is projecting roughly 1,396 reflecting a drop of 151. He noted the rate of decrease has been relatively steady since 1995, and staff continues to project decreases at about the same rate. **Director Day** noted that in 1996, pull-tabs supported 56 percent of the Commission's revenue—they now represent 31 percent of the revenue. There were no further questions or comments.

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to approve the 2007-2009 biennium budget as set forth in staff's recommendation. *Vote taken; the motion passed with four votes.*

Agency Request Legislation:

Amy Hunter, Legislative Liaison reported that Agency Request Legislation must be submitted to the Governor's Office by September 30. If the Governor's Office approves the request, the legislation is treated like a regular bill and goes through the normal legislative process. Ms. Hunter explained that staff presented conceptual ideas to the Commissioners in June and asked for and received commissioner support. Since then, staff has been contacting a variety of stakeholders for comments on the proposed legislation.

The first agency request legislative proposal would make three changes to RCW 9.46.070 - the section which lists the Commission's powers and duties. It would allow the Director to issue summary suspensions against other individuals and licensees that the Director currently does not have the power to issue summary suspensions against. (The commissioners have been signing summary suspensions.) The second part of the proposal

would allow the Director to issue temporary licenses to that same group of people. It was noted that he currently only has the ability to issue temporary licenses to organizations. The third part of this proposal allows exemptions for military personnel. Under existing statute, a license is only good for one year. Military personnel who are deployed are typically deployed for a longer period of time and upon their return they discover their license has expired. The exemption would allow for a renewal application and make the process a little easier if they have maintained a clean record. Ms. Hunter reported that the Department of Licensing and the Department of Fish and Wildlife have the same type of exemption for military personnel. Ms. Hunter reported that staff is recommending approval of the proposed changes. **Chair Ellis** called for questions or comments regarding the proposed changes to RCW 9.46.070 and there were none.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to revise the Gambling Commission's powers and duties as numerated and to authorize staff to pursue the proposed legislation as presented by staff. *Vote taken; the motion passed with four aye votes.*

Ms. Hunter explained the second proposed agency legislation deals with imposing penalties against minors who gamble. The proposal puts the legal age to gamble very clearly in RCW. If someone under the age of 18 gambles, it would make the violation a Class II civil infraction. She noted that for the past three years the Commission has been doing underage gambling emphasis patrols in conjunction with the Liquor Control Board. It was determined that about half of the time, underage people are allowed to gamble. While there is a good penalty structure in place against the operator and dealer who allowed the underage person to gamble, there isn't any type of direct penalty for the minor. The proposed legislation would allow Commission agents to issue a civil infraction to the minor, which then provides a complete enforcement action against the operator, the dealer, and the minor. Staff referenced the Liquor Control Board statutes in developing this legislation; particularly in relation to the penalty for underage people buying tobacco. Initially staff proposed a Class III Civil Infraction with a \$50 fine—the court may also impose four hours of community service. Stakeholders responded that a \$50 fine today is simply not what a \$50 fine was years ago when the fine was put into place. They suggested that assessing a \$50 fine may not achieve much of a deterrent factor. Staff is now considering a Class II Civil Infraction with a \$125 fine. The court could impose four hours of community service and any court costs.

Ms. Hunter advised the Recreational Gaming Association suggested allowing a Controlled Buy Program, which is something they allow with their liquor license. If a licensee wanted the ability to check whether they have people under the age of 18 buying liquor (or in this case gambling), they would simply contact the Gambling Commission and indicate that they were planning on bringing in an underage minor on a specified date to see if the minor was able to gamble. Ms. Hunter reported that staff was fine with the suggestion; however, the proposal currently before the Commission did not have the enabling language. If approved, staff would plan on copying the language directly from the Liquor Control Board statute. Staff doesn't believe it will put much burden on staff to approve the program; and, it would address the concerns expressed by the licensees regarding their desire to have the ability to

test whether their staff checks for underage people. Staff recommends approval of the proposed legislation with the addition of the Controlled Buy Program language in the Liquor Control Board statute.

Senator Devlin asked who would ultimately be responsible for checking the identification. He noted that with liquor violations the establishment receives the ticket, not the server. That has always been a contention with the people who own the establishment—if their people don't check the identification, then why shouldn't they be ticketed. **Ms. Hunter** believed the liquor enforcement process may have changed recently. Staff's understanding is that the Liquor Control Board has some type of penalty against the person serving the alcohol as well as the operator and the minor. Underage gambling would be intended to have the same kind of set up. **Director Day** noted that the penalties relative to the business owner are much more substantial for either the dealer or in this case the underage person. He cautioned that the Commission doesn't currently have the ability to react at all to the underage gambler, and from an enforcement standpoint, this would at least provide for some accountability for the underage individual.

Commissioner Bierbaum verified the monetary fine would go to the minor who gambled. **Ms. Hunter** affirmed. Commissioner Bierbaum inquired what the penalty would be for the operator that allowed the minor to gamble. Ms. Hunter responded that for a first offense, the Commission would issue a ticket and a notice of violation and settlement—a \$300 ticket for the operator and a \$250 ticket for the dealer for a first time offense. In the case of a second offense, the Director would bring a statement of charges against the business. They are usually settled with a one-day suspension and the licensee has the option of paying a fine rather than serving the suspension. The fine is based on how much money the licensee is bringing in per day. A second offense may typically cost several thousands of dollars; it varies depending on the net win an establishment achieves. The larger and more successful licensees will pay higher penalties than smaller operators.

Commissioner Bierbaum commented that she had observed a sign in a convenience store describing the penalty for giving cigarettes to minors was \$5,000. She asked why the penalty for allowing minors to gamble should be less than the penalty for providing cigarettes to a minor. **Jerry Ackerman**, Assistant Attorney General advised the \$5,000 penalty was the statutory amount established in RCW 70.155.

Chair Ellis called for public comments on the legislation concerning underage gambling.

Monty Harmon – Harmon Consulting Incorporated encouraged staff to proceed with a \$250 fine similar with the Liquor Control Board, and to mirror the liquor laws allowing an operator to have their own ability to test their capability to detect minors without penalty. There were no further comments or questions.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to approve the proposed legislation by staff concerning underage gambling, to include the addition of

the language patterning a program after the Liquor Control Board's controlled buy program.
Vote taken; the motion passed with four aye votes.

Ms. Hunter addressed the third agency request legislation dealing with barring known criminals. She explained this was a preventive type of bill. During undercover compliance inspection investigations, several people that had been convicted of gambling related crimes at gambling establishments were discovered. Washington is the only state with a significant amount of gambling that doesn't also have the barring ability. Nevada and New Jersey have this type of legislation. The legislation would do three things: it would bar certain criminals from gambling facilities, it would require operators to bar them, and it would also establish a civil process for creating the barring list—to include notice to the person that will be barred. In response to staff's inquires about the legislation, stakeholders indicated the list was too broad. Ms. Hunter emphasized the intent would be to bar people who have been involved in and convicted of a gambling related crime to be placed on the list. Ms. Hunter asked that this legislation be held over until September. Staff received more comments and ideas at the Study Session that should be incorporated in a final proposal. Staff would also like to add language that if a person was barred in another state, they should also be barred from being in gambling establishments in Washington. Ms. Hunter advised that New Jersey has 182 people on their list, Nevada has 39, and Indiana has 101 people on their list. There were no further questions and comments and **Chair Ellis** concurred with holding the proposed legislation for the September agenda. He asked Director Day to continue with the Director's Report.

Correspondence

Director Day addressed the correspondence sent by Chair Ellis regarding Senate Bill 2078 which deals with changes to the Indian Gaming Regulatory Act, and specifically dealt with the relative authority between the State Tribes vs. the National Indian Gaming Commission. He pointed out that the Commission received communication back from Senator Murray's office and Senator Cantwell's office expressing their appreciation for the Commission's clarification. The letter made the point that IGRA and the system in effect was designed around the differences in state law and was intended to reserve the jurisdiction of casino style gambling to regulate gambling in states that had compacts between the tribe and the state. At this point, Director Day advised the bill has not moved forward, and Congress is approaching a recess. Staff will continue to monitor the legislation and provide updates as appropriate.

Director Day also addressed exit notes from the State Auditor in reference to a recently completed audit of the agency for the period ending June 2006. Again, for the sixth consecutive occasion, there have been no findings for the Gambling Commission.

Lastly, **Director Day** advised selected portions of the BETONSPORTS indictment for Internet gambling was inserted in the agenda packet. He noted the CEO of BETONSPORTS was arrested as he attempted to change planes in Texas while enroute to Costa Rica. Director Day believed the CEO remains incarcerated pending further action on this case. Director Day reported that in a related news release it has

been alleged that there is a connection between the Costa Rica property organization BETONSPORTS to New York organized crime families. He anticipated that as the issue unfolds it will continue to get more significant. Director Day referenced page 17 of the indictment noting it lists a wager placed from the State of Washington through BETONSPORTS. He affirmed the Commission has a connection to this indictment and enforcement action.

With no further comments or questions, **Chair Ellis** called for a recess at 3:10 p.m. and reconvened the meeting at 3:20 p.m.

3. New Licenses and Tribal Certifications:

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-17. *Vote taken; the motion passed with three aye votes (Commissioner Bierbaum was absent for the vote).*

4. Petitions for Reconsideration:

Nga Tran, Card Room Employee:

Chair Ellis reported this item has been continued until the October Commission Meeting.

Sharkey's Sports Bar and Grill – Lynnwood:

Assistant Attorney General Bruce Marvin was present for the State. **Attorney Tamara Chin** was present representing **Petitioner Mark Wertz**. Ms. Chin and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Ellis** called for an executive session to deliberate the matter. The meeting was recessed from 3:40 p.m. to 4:00 p.m., at which time Chair Ellis recalled the public meeting.

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to accept for filing the licensee's amendment of the petition for reconsideration for final order, and that the Commission continue this matter to the meeting in Spokane on September 14 or 15; further, Assistant Attorney General Marvin has 15 days to respond to Attorney Chin's amendment and Attorney Chin has 5 days from having received Mr. Marvin's response to provide a response of no more than 5 pages. *Vote taken; the motion passed unanimously.*

Chair Ellis addressed Attorney Chin and commented that the Commission was not happy with the way the submission of these papers occurred. This matter has now been set over for yet another hearing so the Commission will have time to review the papers, and the matter will be on the agenda for the September meeting in Spokane. **Ms. Chin** thanked the Commission for the courtesy of accepting the paperwork and continuing this matter.

5. Defaults:

Brian Dunn, Card Room Employee - Revocation (Not present)

Amy Hunter, Administrator for the Communications and Legal Division advised that staff is asking that Mr. Dunn's license be revoked based on him taking 24 gambling chips worth over \$2,300. He had a method of taking them by putting them into his waist pocket or waist area. He admitted to taking between \$700 and \$900 in chips over a two-month period. The summary suspension order was signed at the June meeting. The agent personally served the order on Mr. Dunn. By failing to respond, Mr. Dunn has waived his right to a hearing and staff is requesting a default order be entered revoking his card room employee license.

Commissioner Niemi made a motion seconded by Commissioner Bierbaum that the Commission accept the findings and conclusions in the case of Brian Dunn and enter an order of default revoking Mr. Dunn's license to conduct authorized gambling activities in the State of Washington. Vote taken; the motion passed with four aye votes.

Adam Froese, Card Room Employee- Revocation (Not present)

Ms. Hunter reported the Commission also signed a summary suspension order for this licensee at the June Commission Meeting. Staff is requesting that Mr. Froese's license be revoked based on him giving over \$1,000 in pull-tabs to friends without having them pay for the pull-tabs, and then sharing in the winnings. Mr. Froese admitted to giving away between \$400 and \$600 in pull-tabs. The order was personally served, and by failing to respond Mr. Forese has waived his right to a hearing. Staff requests that a default order be entered revoking his license.

Commissioner Bierbaum made a motion seconded by Commissioner Niemi that the Commission enter an order revoking Adam Froese's license to conduct authorized gambling activities consistent with the findings, conclusions, decision and final order of default substantially as staff presented. Vote taken; the motion passed with four aye votes.

Brian Long, Card Room Employee- Revocation

Chair Ellis noted this default hearing would be continued until the September Commission meeting.

Ian McDonald, Card Room Employee- Revocation (Not present)

Ms. Hunter reported that staff is requesting that Ian McDonald's license be revoked based on him moving a tip wager from the player's betting circle to a bonus fortune wager. She explained that when Mr. McDonald saw that the player would be winning a bigger hand, he took the tip wager and moved it over, which entitled him to money that he would not have otherwise won. Ms. Hunter noted that when agents interviewed Mr. McDonald, he acknowledged that he had made the mistake; but, he said that it was not intentional. His employer at the time terminated him because of the incident and he went on to another location; however, that location has also terminated Mr. McDonald. Charges were sent by certified mail and by regular mail.

The certified mail was returned; however, the regular mail was not. Under Commission rules, it would be presumed that Mr. McDonald received service. Staff attempted to call Mr. McDonald and received a recorded message that the phone was no longer in service. By failing to respond, Mr. McDonald has waived his right to a hearing. Staff requests that an order be entered revoking Mr. McDonald's card room employee license.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that based upon the findings and conclusions, the Commission enter an order of default against Ian McDonald revoking his license to conduct authorized gambling activities in the State of Washington. *Vote taken; the motion passed with four aye votes.*

6. Summary Suspensions:

None requested.

7. Other Business/General Discussion/Comments from the Public:

Chair Ellis called for public comments.

Dolores Chiechi-Executive Director for the Recreational Gaming Association (RGA) introduced herself and welcomed Commissioner Rojecki to the Commission.

At 4:10 p.m., **Chair Ellis** called for an executive session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 4:40 p.m., and immediately adjourned the meeting.

Minutes submitted by,

Shirley Corbett
Executive Assistant

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DRAFT MINUTES**

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MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
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 SENATOR JEROME DELVIN, Richland

STAFF PRESENT: **RICK DAY**, Director
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 SHIRLEY CORBETT, Executive Assistant

8. Approval of Minutes:

Commissioner Niemi made a motion seconded by Commissioner Bierbaum to approve the minutes of the regular meeting of July 13-14, 2006 as presented. Vote taken; the motion passed with three votes. Commissioner Rojecki abstained.

9. Petition for Rule Change – Game Tech. Inc.:

WAC 230-12-340 and WAC 230-20-244:

Ms. Hunter reported this rule was held over from last month and is up for final action. The petitioner has been working with the licensees and Commission staff, and has developed a proposal workable to all parties. She explained that Game Tech manufactures bingo card daubers, which are electronic machines that allow a person to play 66 electronic bingo cards at once, as well as an unlimited number of paper cards. Game Tech provided physical samples of the machine for viewing.

Under the current rule the fee for the daubers can only be based on the number of times the dauber is used or the number of bingo sessions. Per card fees are not allowed. The new language in the petition allows a fee per card; but, it is limited to player selection games.

Ms. Hunter referred to RCW 9.46.120 Subsection 1, which says that bingo proceeds cannot inure to the benefit of anyone other than the organization. She clarified it is not considered inurement if the expense is necessary—and the WAC states that an expense is necessary if it improves the overall profitability of the activity by increasing the gambling receipts more than the corresponding increase in expenses. Another provision in the same statute prevents the lease or rent from being based on a percentage of gross gambling receipts. Ms. Hunter affirmed that for several years the rules did not allow a per card fee based upon the idea that this was similar to a lease being based on a percentage of sales. Staff reexamined the rule and doesn't feel that is a concern as long as the licensee can show that it is a necessary expense. Staff recommends adoption of the new proposal as submitted, to become effective 31 days after filing.

Jeremy Schwenk, General Manager for Game Tech International demonstrated the functions of the Traveler version of an electronic dauber. He noted that players typically play the 20 paper cards in addition to the 66 electronic dauber games in order to increase their chances of winning. He also noted the more cards they have, the better their odds. This concept also helps the licensee's bottom line since it is like having an additional player in the hall because of the extra cards they can physically play.

Mr. Schwenk explained the player selection game is very similar to the Lottery or Keno—it allows the player to pick their own numbers. In a Pick 8 game, the player would select eight numbers which would then be inputted into the computer system. A Bingo card would be generated with the eight numbers in the electronic dauber and played like a regular player selection game. Currently player selection games are played on a carbon copy, 2-part form where the player writes in their eight numbers. They take one of the copies and place it into a lock box so they can't manipulate the forms after the numbers have been drawn. When someone "wins" they pull the carbon copy and verify that the numbers on the carbon copy match what was done. By putting the game on an electronic dauber and putting it into the point of sale system, it automates the process. It is generated in the computer, and the computer has a data base that it can be verified against.

Director Day verified it is essentially based on a game that occurs during the course of the regular bingo game. **Mr. Schwenk** affirmed that the numbers come from the regular calling process.

Chair Ellis thanked Mr. Schwenk for bringing the daubers, noting it was very helpful for the commissioners to actually see them and put the issue in context. He also

thanked the licensee's for their work on this issue. **Chair Ellis** called for public comments and questions.

Ronnie Strong - Bingo Manager of Am Vets (Post #1 in Tacoma) spoke on behalf of the Charitable Nonprofits Voice and the Washington Charitable and Civic Gaming Association, noting that all parties agree with the alternative rule proposed by staff.

Bill Nooks - Tulalip Gaming Agency asked about the fail safe controls designed for the system if something should go wrong and how the system could be recovered.

Mr. Schwenk responded that it would depend on whether it was a problem with the computer system or the electronic daubers. He assured Mr. Nooks there were back-up routines (on a daily basis) that involve secondary hard drives for a "raid system" that is mirrored to two separate hard drives. If one hard drive fails, the second hard drive kicks in. There is also a back-up to the removable media tape drive off-site. He advised that depending on the desires of the customers, Game Tech will go as far as to have a complete secondary server on location so that if one fails it can pick up where the other one left off.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to adopt staff's alternative as proposed to be effective 31-days after filing. *Vote taken; the motion passed with four votes.*

9. Financial Statements for House-Banked Card Rooms:

WAC 230-40-821 and WAC 230-40-823:

Dave Trujillo, Assistant Director for Licensing Services noted that Item A relates to WAC 230-40-821-Accounting Systems for House-Banked Card Rooms, and Item B relates to WAC 230-40-823-Financial Statements Regarding House-Banked Card Rooms. Both are very similar and staff has not received any statements in opposition. The proposed amendment to WAC 230-40-821 will make a change to the rule to require records of receipts and disbursements to be approved by Commission staff prior to a license being issued to conduct house-banked card games. The rule requires that accounting be maintained in accordance with Generally Accepted Accounting Principals (GAAP). Mr. Trujillo explained one change was made to the rule since last month. The header under Subsection 1 referred to revenues and expenses while the text used the term revenues and costs. Staff changed the terms to be consistent with revenues, costs, and expenses after reviewing the American Institute of Certified Public Accountants Guide for Casino Auditing.

The proposed change to WAC 230-40-823 clarifies the requirement for financial statements that are submitted to the Commission staff for review. The rule now includes definitions for financial statements, card room receipts, and provides a definition for the term independent. Staff recommends adoption of amendatory section WAC 230-40-821 and WAC 230-40-823 as presented with an effective date of January 1, 2007. **Chair Ellis** called for public comments.

Max Faulkner-Vice President, Recreational Gaming Association, reported that the RGA supported staff's changes to the accounting WACs.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that the changes to WAC 230-40-821 be adopted and become effective January 1, 2007, as proposed by staff. *Vote taken; the motion passed with four aye votes.*

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that the changes to WAC 230-40-823 be adopted and become effective January 1, 2007, as proposed by staff. *Vote taken; the motion passed with four aye votes.*

10. Rules Simplification Project:

Chapter 230-11 Raffles:

Chair Ellis noted this item has been deferred for final action until the September meeting to allow for more stakeholder input.

11. Rules Simplification Project

Chapter 230-18 – Promotional Contests of Chance:

Beth Heston, Project Manager for the Rules Simplification Project reported that Chapter 18 relates to the Promotional Contests of Chance consisting of three rules presented for possible filing. There were no changes to the rules—they were merely rewritten for clarity and for simplification purposes. It was noted the rules have been discussed during study sessions with the affected members of the industry, and there haven't been any negative comments about the proposed rules as presented. **Chair Ellis** called for public comments and there were none.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to accept Chapter 230-18-005, 230-18-010, and 230-18-015 – Promotional Contests of Chance as presented by staff to be effective January 1, 2008. *Vote taken; the motion passed with four aye votes.*

12. Rules Simplification Project

Chapter 230-09 – Fund Raising Events:

Ms. Heston reported Chapter 09 has been discussed with stakeholders at previous meetings. Ms. Heston addressed the rule summary, noting a wording change to WAC 230-09-150, which previously said that licensees were to include the "value" of prizes in their calculations—value was changed to "cost" because staff felt that costs were more objective and could be proven with receipts. **Chair Ellis** called for public comments and there were none.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file Chapter 230-09 as presented by staff. *Vote taken; the motion passed with four aye votes.*

13. Gambling Service Suppliers:

WAC 230-02-205, WAC 230-02-203, WAC 230-02-204, WAC 230-02-210, WAC 230-03-210 (*Rules Simplification Companion*), **WAC 230-03-211** (*Rules Simplification Companion*), and **WAC 230-03-212:**

Dave Trujillo-Assistant Director, Licensing Services reported that Item 13 consisted of a series of rules that are intertwined. He addressed WAC 230-03-205, the Gambling Service Supplier Rule, drawing attention to Section 1-C. Staff believed the initial wording relating to “providing infrastructure” was too broad—it created problems for staff when trying to determine who needed to be licensed as a service supplier. It also made it problematic for applicants when they were trying to determine whether or not they might be required to have a license. The new wording of “financing for infrastructure or facilities or equipment” is more restrictive for staff; however, it will help staff when applying this section of the rule. The second change also originates in the same section, and it addresses exclusions for financing. The exclusions include financing by a mutual savings bank or credit union regulated by the Department of Financial Institutions and federally regulated Commercial Lending Institutions. Staff recommends adding the exclusions to keep up with the times.

WAC 230-02-204 is a new section which adds a reference to regulating institutions. If an institution meets the requirements under Sections 1, 2, and 3, they would be excluded. To be excluded, an organization would have to prove that they are registered and actively regulated by the Securities and Exchange Commission. This change is also proposed as an effort to keep up with the times.

The third change relates to WAC 230-02-203, which adds a reference and definition for acting as a lending agent, loan servicer, or replacement agent. Staff recognizes there is a lot of money available to lend and there are a lot of agencies willing to lend money. The intent of this rule is to make it clear that the institution will be required to obtain a license from the Commission if the institution is not regulated.

Senator Prentice verified that by talking about financial institutions, the Commission was not including pay-day lenders. **Mr. Trujillo** affirmed; unless they are providing one of the services in WAC 203—then they would be subject to licensure and at that point they would be required to obtain a license, for which they may or may not qualify.

Mr. Trujillo noted the fourth change addressed the definition of gambling equipment which included a very expansive term called “gambling related software”—a term has been problematic when staff tries to determine who should get a license and who should not. Item 2-E in the Gambling Service Supplier Defined rule, defines “a person who provides names, images, artwork or associated copyrights and trademarks for their features that do not affect the results or outcome of the game for use in gambling equipment.” He noted that depending on how the application was handled, staff would require a license for the patents and trademarks or other things that really didn’t affect the outcome of a game. The definition was narrowed to be clear.

Mr. Trujillo noted the last rule change actually incorporates a current practice. The Tribal / State Compacts authorize tribes to have Tribal Lottery Systems analyzed by vendors from a list of Commission approved vendors. The practice has been that in order to be on the approved vendor list, the vendor must be licensed. The requirement for such licensure has been added to the rule in Item 1-I. Staff has not received any statements against the rule.

Staff recommends that new section WAC 230-02-203 Defining Lending Agent Loan Service or Placement Agent be filed for further discussion. **Deputy Director Reese** offered two housekeeping changes which Mr. Trujillo accepted. **Chair Ellis** called for public comments and questions—no one stepped forward and the public hearing on the four proposed rule was closed.

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to accept for filing and further discussion new section WAC 230-02-203 defining a lending agent, loan servicer, or placement agent, as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to accept for filing and further discussion the new section WAC 230-02-204 defining a regulated lending institution, as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to accept for filing and further action amendatory section WAC 230-02-205 defining gambling service supplier, as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to accept for filing and further action amendatory section WAC 230-03-210 applying for a gambling service supplier license, as presented by staff. *Vote taken; the motion passed with four aye votes.*

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to file 230-03-211 defining a lending agent, loan servicer, or placement agent, as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** to file 230-03-212 defining regulated lending institutions, as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

14. Allowing Poker at Fund-Raising Events

WAC 230-25-040, WAC 230-25-045, WAC 230-25-050, and WAC 230-25-325:

Jeanette Sugai, Acting Assistant Director reported that Item 14 involved three proposed rule changes and a new rule that would allow poker tournaments to be conducted at fund raising events and limited fund raising events (FREs).

The proposed changes to WACs 230-25-050 and 230-25-325 add language that would allow poker tournaments at FREs and limited FREs. The proposed change to WAC 230-12-040 addresses the limits on wagering should poker tournaments be allowed, and the proposed new rule WAC 230-25-045 lists the requirement that licensees would need to follow when conducting the poker tournaments. Current rules do not allow charitable non-profit organizations to conduct poker tournaments that are open to the general public. Poker has become very popular over the last few years and as a result, staff takes frequent calls from charitable non-profit organizations wanting to run poker tournaments as fund raising events for their organizations.

Ms. Sugai reported that staff does not have regulatory concerns with allowing poker tournaments at fund raising events. Allowing them would be consistent with the recent approval of poker tournaments at Recreational Gaming Events. She reported there have been no stakeholder statements against the proposed rule change and staff recommends filing the rule package for further discussion. **Chair Ellis** called for public comments and questions. There were none.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file the amendatory section to WAC 230-25-040 as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file new section WAC 230-25-045 as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file the amendatory section to WAC 230-25-050 as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file the amendatory section to WAC 230-25-325 as presented by staff for further discussion. *Vote taken; the motion passed with four aye votes.*

15. Other Business/General Discussion/Comments from the Public/Adjournment:

Chair Ellis called for public comments, there were none.

Director Day provided an update regarding the indictment relative to BETONSPORTS and addressed a breaking news release noting that BETONSPORTS just shut down and fired over 806 employees throughout Antigua and Costa Rica. They will only be operating in Asia. It was reported that investors started bailing out of their stocks in the London Stock Exchange in order to keep from being implicated in criminal charges. Director Day noted that it appears enforcement can be effective relative to Internet Gambling and he advised that staff will keep the Commission posted as the case moves forward.

Senator Prentice announced that one of our licensees, Jim Rutis placed 25th out of 8,700 players in the Wide World of Poker Tournament, winning approximately \$250,000. **Max Faulkner** reported that licensee Chris Kealy finished in 71st place for \$90,000.

With no further business, **Chair Ellis** adjourned the meeting at 10:30 a.m., and noted the September 14-15 Commission meeting will be conducted in Spokane.

Minutes submitted by,

Shirley Corbett
Executive Assistant